

Senate Bill 146

By: Senators Seabaugh of the 28th, Shafer of the 48th, Stoner of the 6th, Pearson of the 51st, Williams of the 19th and others

AS PASSED

AN ACT

To amend Chapter 91 of Title 36 of the Official Code of Georgia Annotated, relating to public works bidding, so as to provide definitions; to provide for the advertisement of contract opportunities; to provide for the specifications of such notices and advertisements; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 91 of Title 36 of the Official Code of Georgia Annotated, relating to public works bidding, is amended by revising Code Section 36-91-2, relating to definitions, as follows:

"36-91-2.

As used in this chapter, the term:

- (1) 'Alternate bids' means the amount stated in the bid or proposal to be added to or deducted from the amount of the base bid or base proposal if the corresponding change in project scope or alternate materials or methods of construction is accepted.
- (2) 'Base bid' or 'base proposal' means the amount of money stated in the bid or proposal as the sum for which the bidder or proposer offers to perform the work.
- (3) 'Bid bond' means a bond with good and sufficient surety or sureties for the faithful acceptance of the contract payable to, in favor of, and for the protection of the governmental entity for which the contract is to be awarded.
- (4) 'Change order' means an alteration, addition, or deduction from the original scope of work as defined by the contract documents to address changes or unforeseen conditions necessary for project completion.
- (5) 'Competitive sealed bidding' means a method of soliciting public works construction contracts whereby the award is based upon the lowest responsive, responsible bid in conformance with the provisions of subsection (b) of Code Section 36-91-21.

- (6) 'Competitive sealed proposals' means a method of soliciting public works contracts whereby the award is based upon criteria identified in a request for proposals in conformance with the provisions of subsection (c) of Code Section 36-91-21.
- (7) 'Emergency' means any situation resulting in imminent danger to the public health or safety or the loss of an essential governmental service.
- (8) 'Governing authority' means the official or group of officials responsible for governance of a governmental entity.
- (9) 'Governmental entity' means a county, municipal corporation, consolidated government, authority, board of education, or other public board, body, or commission but shall not include any authority, board, department, or commission of the state, or a public transportation agency as defined by Chapter 9 of Title 32.
- (10) 'Payment bond' means a bond with good and sufficient surety or sureties payable to the governmental entity for which the work is to be done and intended for the use and protection of all subcontractors and all persons supplying labor, materials, machinery, and equipment in the prosecution of the work provided for in the public works construction contract.
- (11) 'Performance bond' means a bond with good and sufficient surety or sureties for the faithful performance of the contract and to indemnify the governmental entity for any damages occasioned by a failure to perform the same within the prescribed time. Such bond shall be payable to, in favor of, and for the protection of the governmental entity for which the work is to be done.
- (12) 'Public works construction' means the building, altering, repairing, improving, or demolishing of any public structure or building or other public improvements of any kind to any public real property other than those projects covered by Chapter 4 of Title 32. Such term does not include the routine operation, repair, or maintenance of existing structures, buildings, or real property.
- (13) 'Responsible bidder' or 'responsible offeror' means a person or entity that has the capability in all respects to perform fully and reliably the contract requirements.
- (14) 'Responsive bidder' or 'responsive offeror' means a person or entity that has submitted a bid or proposal that conforms in all material respects to the requirements set forth in the invitation for bids or request for proposals.
- (15) 'Scope of project' means the work required by the original contract documents and any subsequent change orders required or appropriate to accomplish the intent of the project as described in the bid documents.
- (16) 'Scope of work' means the work that is required by the contract documents.

(17) 'Sole source' means those procurements made pursuant to a written determination by a governing authority that there is only one source for the required supply, service, or construction item."

SECTION 2.

Said chapter is further amended by revising Code Section 36-91-20, relating to written contract required, as follows:

"36-91-20.

(a) All public works construction contracts subject to this chapter entered into by a governmental entity with private persons or entities shall be in writing and on file and available for public inspection at a place designated by such governmental entity. Municipalities and consolidated governments shall execute and enter into contracts in the manner provided in applicable local legislation or by ordinance.

(b)(1) Prior to entering into a public works construction contract other than those exempted by Code Section 36-91-22, a governmental entity shall publicly advertise the contract opportunity. Such notice shall be posted conspicuously in the governing authority's office and shall be advertised in the legal organ of the county or by electronic means on an Internet website of the governmental entity or an Internet website identified by the governmental entity which may include the Georgia Procurement Registry as provided by Code Section 50-5-69.

(2) Contract opportunities that are advertised in the legal organ shall be advertised a minimum of two times, with the first advertisement occurring at least four weeks prior to the opening of the sealed bids or proposals. The second advertisement shall follow no earlier than two weeks from the first advertisement.

(3) Contract opportunities that are advertised solely on the Internet shall be posted continuously for at least four weeks prior to the opening of sealed bids or proposals. Inadvertent or unintentional loss of Internet service during the advertisement period shall not require the contract award or bid or proposal opening to be delayed.

(4) Contract opportunities that will be awarded by competitive sealed bids shall have plans and specifications available on the first day of the advertisement and shall be open to inspection by the public. The plans and specifications shall indicate if the project will be awarded by base bid or base bid plus selected alternates and:

(A) A statement listing whether all anticipated federal, state, or local permits required for the project have been obtained or an indication of the status of the application for each such permit including when it is expected to be obtained; and

- (B) A statement listing whether all anticipated rights of way and easements required for the project have been obtained or an indication of the status as to when each such rights of way or easements are expected to be obtained.
- (5) Contract opportunities that will be awarded by competitive sealed proposals shall be publicly advertised with a request for proposals which request shall include conceptual program information in the request for proposals describing the requested services in a level of detail appropriate to the project delivery method selected for the project.
- (6) The advertisement shall include such details and specifications as will enable the public to know the extent and character of the work to be done.
- (7) All required notices of advertisement shall also advise of any mandatory prequalification requirements or pre-bid conferences as well as any federal requirements pursuant to subsection (d) of Code Section 36-91-22. Any advertisement which provides notice of a mandatory pre-bid conference or prequalification shall provide reasonable advance notice of said conference or for the submittal of such prequalification information.
- (c) Governmental entities are authorized to utilize any construction delivery method, provided that all public works construction contracts subject to the requirements of this chapter that:
- (1) Place the bidder or offeror at risk for construction; and
 - (2) Require labor or building materials in the execution of the contract
- shall be awarded on the basis of competitive sealed bidding or competitive sealed proposals. Governmental entities shall have the authority to reject all bids or proposals or any bid or proposal that is nonresponsive or not responsible and to waive technicalities and informalities.
- (d) No governmental entity shall issue or cause to be issued any addenda modifying plans and specifications within a period of 72 hours prior to the advertised time for the opening bids or proposals, excluding Saturdays, Sundays, and legal holidays. However, if the necessity arises to issue an addendum modifying plans and specifications within the 72 hour period prior to the advertised time for the opening of bids or proposals, excluding Saturdays, Sundays, and legal holidays, then the opening of bids or proposals shall be extended at least 72 hours, excluding Saturdays, Sundays, and legal holidays, from the date of the original bid or proposal opening without need to readvertise as required by subsection (b) of this Code section.
- (e) Bid and contract documents may contain provisions authorizing the issuance of change orders, without the necessity of additional requests for bids or proposals, within the scope

of the project when appropriate or necessary in the performance of the contract. Change orders may not be used to evade the purposes of this article.

(f) Any governmental entity may, in its discretion, adopt a process for mandatory prequalification of prospective bidders or offerors; provided, however, that:

- (1) Criteria for prequalification must be reasonably related to the project or the quality of work;
- (2) Criteria for prequalification must be available to any prospective bidder or offeror requesting such information for each project that requires prequalification;
- (3) Any prequalification process must include a method of notifying prospective bidders or offerors of the criteria for or limitations to prequalification; and
- (4) Any prequalification process must include a procedure for a disqualified bidder to respond to his or her disqualification to a representative of the governmental entity; provided, however, that such procedure shall not be construed to require the governmental entity to provide a formal appeals procedure. A prequalified bidder or offeror can not be later disqualified without cause."

SECTION 3.

All laws and parts of laws in conflict with this Act are repealed.